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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, DC
Stop Code 1170
Washington, DC 20554

Re: MM Docket No. 92-246
Ridgecrest, CA

Dear Ms. Searcy:

Transmitted herewith on behalf of Valley Public Television, Inc., are an original and four copies of its "REPLY COMMENTS" in the above-referenced Rule Making proceeding.

Should any questions arise concerning this matter, kindly communicate directly with the undersigned.

Very truly yours,

Kathleen Victory
Kathleen Victory

Enclosures
cc: Mr. Colin Dougherty

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BEFORE THE

Federal Communications Commission

JAN 12 1993

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.606(b),) RM-8091
Table of Allotments,) MM Docket 92-246
TV Broadcast Stations,)
(Ridgecrest, California))

To: The Commission

REPLY COMMENTS

Valley Public Television, Inc., licensee of educational television station KVPT, Channel *18, Fresno, California ("Valley" or "Proponent"), by its counsel and pursuant to the November 5, 1992 Notice of Proposed Rule Making ("NPRM") in the above-captioned proceeding submits the following comments in response to the Comments filed by Community Television of Southern California ("CTSC").

INTRODUCTION

CTSC, asserting that Valley's proposal as not in the "public interest", urges the Commission to deny the action proposed in this rule making.¹ CTSC, however, does not and, in fact, cannot claim that it or any other entity will be harmed by the grant of the proposed action. CTSC's comments, under the guise of addressing the public interest in the proposed action, are no more than

¹ To the extent that CTSC's comments address the merits of Valley's request for waiver of the minimum separation requirements they should be ignored. The time for opposing Valley's waiver request filed with its application is long since over, CTSC's opposition is on file and it is for the Commission to decide on such request in its own time. CTSC must not be allowed to use its Comments in this rule making proceeding as an additional opportunity to oppose Valley's waiver request.

another in a long line of attempts to prevent Valley from providing non-commercial off-air broadcasting to Bakersfield, CA. Thus, while CTSC gives lip service to the public interest in the proposed substitution, it is only CTSC's private interests that are behind its comments.²

The issuance of the NPRM by the Commission is itself a demonstration that the Commission has determined that it is quite willing to take the action proposed by the NPRM. Hence, as a *prima facie* matter, the Commission recognized that Valley's public interest showing in the Petition for Rule Making was adequate justification for the requested action.

I. RULE MAKING PETITION HAS MERIT

1. The entire premise of the instant rule making proceeding is the elimination of the totally unnecessary short-spacing at the site proposed in Valley's Ch. *39 application for a full-power TV station at Bakersfield, CA.³ CTSC declares that this purpose (and the superior service to more viewers which Valley, as a result, could provide) is not adequate basis for the action proposed herein since CTSC proposes a fully-spaced, albeit inferior, site for its

² This is evidenced by the fact that CTSC makes a "standing" showing (stating that it is an applicant for facilities which are mutually exclusive with Valley's Ch. *39 application for Bakersfield) where none is required. TV Channel Assignments, 53 RR 2d 53 (M.M.B. 1983) (standing requirements imposed on parties in adjudicatory proceedings do not apply in rule making proceedings).

³ Thus, CTSC's insinuation that Valley is in some unauthorized manner seeking to alleviate the short-spacing which exists is surprising.

mutually exclusive Ch. *39 facilities.⁴ Comments, at 2. While the lack of fully-spaced sites is generally a requisite showing for a short-spacing waiver⁵, the existence of public interest justifications can be, and in this case is, sufficient basis for amendment of the table of allotments. Moreover, amendment of the table of allotments to eliminate short-spacing is an acceptable alternative (or additional means) to a waiver request -- particularly since a grant of the rule making would obviate the need for a waiver of the short-spacing rules and save the limited time and resources of the Commission.

2. The public interest not only favors a choice between mutually exclusive applicants generally but favors the selection of the best service proposed by such applicants.⁶ Not only would the proposed channel substitution alleviate the short-spacing with respect to Valley's proposed Ch. *39 site, it would enable Valley to provide superior non-commercial service to a greater number of viewers in Bakersfield while leaving Ridgecrest with a reserved

⁴ Therein lies the real crux of CTSC's problem. CTSC knows that, if this rule making or Valley's waiver request are granted, Valley proposes a superior service, thus it must pursue any available tactic to inhibit Valley. See further discussion below.

⁵ CTSC's insistence that the lack of a fully-spaced site is the only grounds upon which a rule making or waiver request may be granted reflects CTSC's bent toward form over substance.

⁶ In at least one other FCC regulated service, all other factors being equal, the application proposing superior facilities which will provide service to more persons will be granted. 47 C.F.R. §74.913(d). See, e.g., Report No. MM-694, released January 7, 1993, announcing a Commission action granting an ITFS application to the applicant which proposed to serve the most students.

channel for future use.

3. As Valley showed in its Petition, and as the Commission noted in the NPRM, no interest has been shown in the Ch. *25 Ridgecrest allotment in the more than 25 years since a reserved channel was allotted to Ridgecrest. The proposed action would merely substitute one reserved channel for another at Ridgecrest. Moreover, as a result of Ridgecrest's proximity to Los Angeles, under the terms of the ATV Freeze, neither Ch. *25 nor any other vacant television allocation to Ridgecrest can be utilized currently. That the public interest favors the modification of the table of allocations to eliminate short-spacing to a vacant and unapplied for allotment to a small, isolated town which cannot currently be used in order to enable consideration of a superior proposal for non-commercial service to a market which has expressed significant interest in expanded non-commercial programming cannot seriously be questioned.

II. SUBSTITUTION CHANNEL *41 IS NOT INFERIOR

4. CTSC's concern for the quality of the Ridgecrest allotment is disingenuous. Ridgecrest is a small, isolated town located in the desert of California. As noted above, no interest has been shown in the existing allotment to Ridgecrest in 28 years. The three bases upon which CTSC argues that a grant of the proposed action would leave Ridgecrest with an inferior allotment are bereft of merit but will, nonetheless, be addressed in turn.

a. UHF sharing by Land Mobile Radio Services

5. CTSC argues that a future licensee of Ch. *41 at

Ridgecrest would be subject to any restrictions ultimately adopted, if any, to pursuant to Docket 85-172 (shared use of UHF band by Land Mobile services). Comments, at 4. Because of the possible use of the same Channels tentatively reserved for Land Mobile use pursuant to Docket 85-172 for ATV purposes, any further action in that proceeding has been deferred pending resolution of ATV issues. Order, 63 RR 2d 1695 (1987). As a result, substantive questions exist as to whether such proposed restrictions will ever be effectuated by rules or whether they will be out-weighed by ATV considerations. To preclude the channel substitution herein proposed based upon uncertain future Land Mobile use restrictions is not justified particularly in light of the fact that use of Ch. *41 in Ridgecrest is already prevented by the ATV freeze. Furthermore, any discussion of the impact of the proposed Land Mobile restrictions on a future licensee at Ridgecrest assumes that there will be a licensee at Ridgecrest. History dictates that such a potentiality is not of great likelihood. Such a slim potentiality is too speculative to justify denial of the proposed action.

b. FCC policy against substitution of reserved channels with higher reserved channels

6. Citing *Santa Maria, California*, MM Docket 86-282, DA 92-1474, released November 23, 1992, CTSC argues that substituting Ch. *41 for Ch. *25 at Ridgecrest is inconsistent with the Commission's policy of not substituting a higher reserved channel for a lower one. Comments, at 4.

7. Although applicable to requests to accommodate

noncommercial interests as well as commercial, this policy was adopted to protect, not limit or hinder, noncommercial interests. The Commission's position generally is that a higher reserved channel will not be substituted for a lower reserved channel in order to accommodate commercial interests, particularly where other commercial channels are available,⁷ or to accommodate a licensee which prefers a location lower on the UHF band.⁸ Nonetheless, the Commission, not infrequently, has made exceptions to this policy and allowed the substitution of a lower reserved allocation by a higher reserved channel,⁹ particularly where doing so would accommodate noncommercial broadcasting or where a noncommercial channel is nonetheless reserved for future use.

8. In *Santa Maria*, the case cited by CTSC, the Commission's denial of the requested substitution of a higher reserved channel for a lower reserved channel was based largely upon three factors; namely, that the petitioner failed to state in comments its continued interest in the proposed action, that the requested

⁷ *Yreka City, California, Medford, Oregon*, 55 RR 2d 1435, 1435 (1984).

⁸ *Seattle and Tacoma, Washington*, 52 RR 2d 211 (1982).

⁹ See, e.g., *Ventura, Bakersfield, and Santa Barbara*, 7 FCC Rcd 5601 (1992) (substitution of ch. *55 for ch. *32 at Santa Barbara, CA); *Claremore and Tulsa, Oklahoma*, 55 RR 2d 1203 (1984) (ch. *63 substituted for ch. *35 (vacant and unapplied for) at Tulsa, OK); *Seattle and Tacoma, Washington*, 52 RR 2d 211 (1982) (ch. *68 substituted for ch. *28 (vacant and unapplied for) at Tacoma, WA); *Sanger, Clovis, Visalia and Fresno, California*, 49 RR 2d 579 (1981) (ch. *49 substituted for ch. *43 in Visalia, CA); *Lynchburg, Virginia*, 15 RR 2d 1501 (1969) (ch. *54 substituted for ch. *33 at Lynchburg, VA) and *New Orleans, Louisiana*, 15 RR 2d 1602 (1969) (ch. *12 substituted for ch. *8 at New Orleans, LA).

substitution was to accommodate commercial interests, and the availability of a channel not requiring a substitution. Such is not the case here. The requested substitution was not sought to accommodate a commercial interest, Valley reiterated its interest in the proposed action in its comments, and the short-spacing to Valley's proposed Ch. *39 site would not be eliminated by another channel.

c. Substitution channel short spaced
to sample ATV allotments

9. CTSC's objection that the allotment of Ch. *41 to Ridgecrest would be short spaced to the Ch. 41 ATV allotments to Barstow, Clovis and Santa Barbara, California reflected on the Sample ATV Table of Allotments (Comments, pp. 4-5) is similarly flawed. First, the sample ATV Table of Allotments, Exhibit D to the Commission's *Second Further Notice of Proposed Rule Making*, MM Docket 87-268, released August 14, 1992, is just that, a sample. Moreover, the Commission expressly said of the sample table:

It is intended for the purpose of enabling interested parties to evaluate how the proposed planning principles would be applied to general an ATV Table of Allotments. We emphasize that this table may differ significantly from the final ATV Table. . . .

Id., at Exhibit D, p. D-1. The sample ATV table is fraught with problems, and otherwise. For example, the Commission acknowledges that the sample ATV allotment for Barstow, California, to which CTSC claims Ch. *41 at Ridgecrest would be short spaced, fails to meet the proposed minimum spacing requirements. *Id.*

10. None of the factors cited by CTSC as denigrating the

noncommercial allotment in Ridgecrest justify denial of the action proposed in the NPRM.

**III. PLACEMENT OF SITE RESTRICTION
ON CHANNEL *25 NOT A PROBLEM**

11. CTSC erroneously argues that the imposition of a site restriction on Ch. *25, rather than substituting Ch. *41 at Ridgecrest, would impair the ability of any licensee to serve the area. Comments, at p. 5. Again, CTSC's argument is built upon speculation. While the existence of a secret military installation to the east of Ridgecrest would limit a licensee's selection of an antenna site to the east of Ridgecrest, this would be true even without the proposed site restriction. Moreover, the selection of what CTSC deems "the more desirable antenna sites", those to the west and south, by a Ridgecrest licensee would be restricted to the west by CTSC's proposed site and to the south (toward Los Angeles) by the continuing ATV freeze. Again, CTSC's argument is entirely speculative since there is no current licensee, there has been no showing of interest for a Ridgecrest station in 28 years and the facility cannot now (and possibly may never) be utilized as a result of the ATV freeze.

12. CTSC claims that "[a]lthough Valley emphasizes that there have been no applicants for Ch. *25 in the past, that factor has never, played a role in the Commission's allotment decisions." Comments, at p. 6 (emphasis in original). On the contrary, that a channel is vacant and unapplied for has on multiple occasions been a factor considered by the Commission in general and specific allocations decisions. Not the least of which are the ongoing ATV

proceeding (MM Docket 87-268), the UHF/Land Mobile Services sharing proposal (MM Docket 85-172) and numerous Television Table of Allocations rule making proceedings.¹⁰

CONCLUSION

The public interest supports the requested substitution of Channel *41 for Channel *25 at Ridgecrest, Colorado in order to alleviate the short-spacing at Valley Public Television, Inc.'s proposed site for Channel *39 at Bakersfield, to allow a choice between mutually exclusive applications, to accommodate a proposal proposing a superior site to provide off-air noncommercial service to more persons all while retaining for Ridgecrest a reserved channel for potential future operation after the resolution of the ATV proceeding. This action will harm no one and will provide the basis for expanded noncommercial service to Bakersfield. Valley

¹⁰ See. e.g., *Claremore, and Tulsa, Oklahoma*, 55 RR 2d 1203 (1984) and *Seattle and Tacoma, Washington*, 52 RR 2d 211 (1982).

continues to support the proposed substitution of Channel *41 for Channel *25 at Ridgecrest, or alternatively the placement of a site restriction on Channel *25.

Respectfully submitted,
VALLEY PUBLIC TELEVISION

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January 12, 1993

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CERTIFICATE OF SERVICE

I, Roberta Wadsworth, a secretary in the law offices of Fletcher, Heald & Hildreth, hereby certify that I have on this 12th day of January, 1992, had copies of the foregoing "REPLY COMMENTS" mailed by first class U.S. Mail, postage prepaid, to the following:

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